

**FINAL**

**MINUTES OF THE COTTONWOOD HEIGHTS CITY  
PLANNING COMMISSION MEETING**

**Wednesday, May 16, 2012**

**6:00 p.m.**

**Cottonwood Heights City Council Room  
1265 East Fort Union Boulevard, Suite 300  
Cottonwood Heights, Utah**

***ATTENDANCE***

**Planning Commission Members:**

Perry Bolyard, Chair  
Jennifer Shah  
James S. Jones  
Joseph L. Scott  
Paxton Guymon  
Gordon Walker

**City Staff:**

Brian Berndt, Planning Director  
Larry Gardner, City Planner  
Shane Topham, City Attorney  
Kory Solorio, Deputy City Recorder  
Natalie Callahan, Youth City Council Representative

**BUSINESS MEETING**

**1.0 WELCOME/ACKNOWLEDGEMENTS – Chair Bolyard.**

Chairman Bolyard called the meeting to order at 6:00 p.m.

**2.0 CITIZEN COMMENTS**

There were no citizen comments.

**3.0 PUBLIC HEARINGS**

**3.1 (Project #SA12-001) Public Comment on a request from Holcomb Land LLC to consolidate three parcels located at 7976, 7979, and 7996 Royal Lane into one parcel through an amendment to the plat of the Subdivision.**

(18:03:31) City Planner, Larry Gardner, presented the staff report and stated that the request is to combine three lots into one. The proposed modification would amend the Royal Lane Subdivision Plat. The property was identified on the site map with the location described as approximately 2400 East 8000 South with access off of Creek Road. The project is comprised entirely of single-family homes and all of the homes front on Royal Lane, which is a private street. The zoning and land use are consistent with the General Plan which calls for large lots that are rural residential in nature. The zoning reflects that with the existing one-half acre zoning. Mr. Gardner mentioned that the zoning to the north and south is similar. The original plat was recorded in 1978 and consisted of 28 lots with the average size being slightly more than

27,000 square feet. The intent was to amend the plat by eliminating the lot lines and create one large lot. The lots currently are just over one-half acre in size and the consolidation would result in a 1.79 acre lot. One home exists on the property and spans two lot lines. Mr. Gardner explained that with the consolidation the applicant would not forfeit his rights to build accessory structures but could not build another dwelling on the property.

Mr. Gardner stated that the Planning Commission's assessment was that 30 days after the public hearing a decision needs to be made on the petition. If the Planning Commission is satisfied that neither the public nor any person will be materially injured by the proposed amendment and it is for good cause, the Planning Commission can allow the amendment to go forth. Mr. Gardner stated that the ordinance covers not only lots but roads. It was noted that the applicant was not proposing to change any roads or utilities. Mr. Gardner stated that the proposal meets the intent of the General Plan and is similar in size to lots in the area. He stated that the proposal is harmonious with the area and meets the intent of the General Plan. Additionally, it does not violate any of the zoning ordinances. The responsibility of the Planning Commission is also to determine that no one will be materially injured by the amendment. It was noted that Royal Lane has a homeowners' association to take care of the roads and remove snow.

Mr. Gardner reported that staff received a letter from Mr. Clark, the attorney for the HOA for Royal Lane. His concerns were that fees are assessed based on individual lots and combining the three lots could possibly reduce the assessment of the property. The HOA was not opposed to the request but wanted time to work out an agreement with Holcomb Land to make certain that no one is materially injured.

Mr. Gardner stated that the property owners in the Royal Lane subdivision received proper notice and were provided copies of the amendment plan and a consent form. So far, staff had received back seven of the 28 consent forms. Mr. Gardner noted that anyone within 400 feet of the property was notified of tonight's meeting. He suggested the Commission take into consideration the agreement, which needs to be resolved with the homeowners' association, before proceeding.

Chair Bolyard asked if, despite the decision of the Planning Commission, the HOA's regulations were that if a plat were to be changed a certain number of people had to agree to it. City Attorney, Shane Topham, explained that the City does not deal with private contracts and would require the HOA to enforce their own private contracts among their members.

Patrick Harris was present representing Ensign Engineering and introduced himself as the Surveyor creating the subdivision plat for Mr. Holcomb. He mentioned that the primary reason for the proposed change was due to Mr. Holcomb receiving three tax notices in the mail. He wanted to simplify the issue and receive only one. Mr. Holcomb asked Mr. Harris' firm to prepare the plat amendment to consolidate the property into one lot.

Adrienne Bell from the law firm of Stoel Rives, stated that there is nothing in the CC&R's that would require approval of the homeowners for a plat amendment. With regard to the assessment, Mr. Holcomb currently pays for the three lots that he owns. He pays a full assessment for the two lots on which his home is situated. For the currently vacant lot he pays the unimproved assessment rate. They were proposing to continue at the same assessment level.

If at some point in the future Mr. Holcomb decides to improve the vacant area of the lot and erect accessory structures, he will have to pay the full improved assessment rate for the three lots. She stated that they were willing to enter into an agreement with the HOA. Discussions were ongoing with the HOA. Ms. Bell stated that they will not decrease the assessment rate paid by Mr. Holcomb regardless of whether the plat or the lots are consolidated. Therefore, there will be no material harm or injury to the association.

Chair Bolyard opened the public hearing.

Beverly Lund, a 53-year resident, stated that her husband and father-in-law developed Royal Lane. She did not understand the reasoning behind Mr. Holcomb's request and did not like it. Mrs. Lund felt that many neighbors were afraid of Mr. Holcomb because he has money. She expressed her opposition to the proposal and thought the property should remain as it is. She explained that when the property was developed it was for residences. Mr. Holcomb has since built a very large home with a wall around it that she characterized as a "monstrosity". She saw no reason to grant the proposed change. Mrs. Lund was asked how she would be harmed by the proposed consolidation. Mrs. Lund stated that she would not be harmed but she considered it foolish with no solid reasoning behind it. She wanted to simply keep the area residential in nature.

There were no further public comments. The public hearing was closed.

*Commissioner Walker moved to keep the public hearing open for an additional 30 days and await a final resolution between the HOA and applicant. Commissioner Jones seconded the motion.*

Ms. Bell asked that any agreement between the applicant and the HOA be in writing prior to the Commission taking action.

*Vote on motion: Paxton Guymon-Aye, Gordon Walker-Aye, James S. Jones-Aye, Jennifer Shah-Aye, Joseph L. Scott-Aye, Chair Bolyard-Aye. The motion passed unanimously.*

#### **4.0 ACTION ITEMS**

##### **4.1 (Project #WT 12-002) Action on a request from Verizon Wireless Communications to replace an existing cell tower with a new 65-foot high monopole on the southeast side of the property located at 3470 East Bengal Boulevard.**

(18:21:21) Commissioner Shah recalled asking the Verizon representative previously if there were any other possible alternative locations on the Smith property for the monopole. Mr. Berndt confirmed that there were no other alternatives since Verizon made application with the City for the subject property.

*Commissioner Scott moved to approve Verizon Wireless Communications' request to replace the existing cell tower with a new 65-foot monopole in the specified location. Commissioner Guymon seconded the motion. Vote on motion: Paxton Guymon-Aye, Gordon Walker-Aye,*

*James S. Jones-Aye, Jennifer Shah-Nay, Joseph L. Scott-Aye, Chair Bolyard-Aye. The motion passed 5-to-1.*

- 4.2     (Project #WT 12-005) Action on a request from T-Mobile Knudsen Corner to remove a roof top wireless antenna from the building located at 6322 South 3000 East and install a new rooftop wireless antenna on the building located at 6340 South 3000 East.**

*(18:23:30) Commissioner Shah moved to approve the application to move the wireless antenna from the building at 6322 South 3000 East and install it at the building at 6340 South 3000 East. Commissioner Jones seconded the motion. Vote on motion: Paxton Guymon-Aye, Gordon Walker-Aye, James S. Jones-Aye, Jennifer Shah-Aye, Joseph L. Scott-Aye, Chair Bolyard-Aye. The motion passes unanimously.*

- 4.3     Approval of the May 2, 2012 Minutes.**

*(18:24:45) Commissioner Shah moved to approve the minutes of May 2, 2012, as written. Commissioner Scott seconded the motion. Vote on motion: Paxton Guymon-Abstain, Gordon Walker-Abstain, James S. Jones-Aye, Jennifer Shah-Aye, Joseph L. Scott-Aye, Chair Bolyard-Aye. The motion passed unanimously with two abstentions.*

## **5.0     DISCUSSION ITEMS**

- 5.1     (Project #CUP 11-004) Review and discuss findings of fact for a proposal from Cottonwood Partners requesting approval to construct two office buildings located at 2750, 2770, and 2800 East Cottonwood Parkway (Cottonwood Corporate Center), including possible tentative approval of the general parameters of a formal written decision and authorizing staff and legal counsel to prepare a draft decision for consideration by the Planning Commission at a future public meeting, perhaps following review of and input on such draft decision by the Utah Property Rights Ombudsman.**

*(18:25:43) Commissioner Guymon reported that he had personally read all of the materials provided. He agreed with the proposed findings and conclusions submitted by the applicant, however, he felt one item was missing. One of the main points raised by the neighborhood opposition was with the language in Section 19.46.050 of the City Ordinances, which states that any development in the ORD Zone shall be subject to a Master Development Plan approved by the Planning Commission. He explained that the ordinances do not define the term “Master Development Plan”. It seemed to him that there are only two terms that could be used to describe “Master Development Plan”. These were “site plan”, which the ordinance clearly defines, and a “general plan”. If the Commission were to choose between the two terms they would have to choose “site plan” because it falls within the arena that the Planning Commission is authorized to act upon. He believed that the correct interpretation of the ordinance was that they have to approve a “site plan” as part of any development of the ORD Zone. He considered the term “site plan” to be synonymous with “Master Development Plan” for purposes of the ordinance. He suggested any findings and conclusions adopted on the application address that issue. He did not think the applicant’s findings adequately addressed that question.*

It was clear to Commissioner Walker that when the City incorporated the original language was transferred over. He noted that when the applicant made application in this particular ORD Zone he submitted a Master Plan, which was presented to and approved by the County. It has since been carried forward, even through the transition of the City and evidenced on the websites of both the developer and the group that bought the property. He felt that the language referred to by Commissioner Guymon had been followed. He thought the subject parcel should be considered part and parcel of the original application evidenced on the website and approved by the County. It would not be considered a correct application because it was not part of and does follow the original application presented and approved by the County. Commissioner Walker explained that the parcel was a single parcel and part of a master-planned development that has existed for years. He was certain that the master plan was recorded. If the language is to be adhered to in the ordinance, they would be following the original Master Plan.

Commissioner Guymon felt that by following what they thought was the County's approved Master Plan, they would be doing so in derogation of City ordinances. He stated that buildings above 35 feet are allowed as a conditional use, which would mean that with the current Master Plan, which limits heights to two stories, they could under no circumstance approve as a conditional use a building above 35 feet.

Commissioner Guymon referenced Section 19.02.080 and stated staff should be given direction in preparing findings and conclusions. He suggested the Commission establish findings and conclusions that follow the applicants' attorney's submission that addresses the Master Plan requirement.

Commissioner Walker asked Commissioner Guymon if he was suggesting that the findings of fact that come from the applicant are dispositive in all matters and cases and that there is no possible mitigation. Commissioner Guymon responded that the proposed findings submitted by the applicant were thorough and had done all that could be expected in terms of mitigation on the impacts of a six-story building.

Commissioner Shah brought up the issue of parking and stated that the applicants had done a good job of mitigating various factors. She noted that that some action needed to be taken to mitigate concerns expressed by the neighborhood, including the following:

1. Lighting. The desire was to have more of a cone design and sconces on the external portion of the parking lot.
2. Address the lane on the west side of the parking structure. It was suggested that the amount of proposed augmented landscaping be increased, that the lane be eliminated altogether, and designate the access as the lower level of the parking lot via Cottonwood Parkway or place the access inside the building rather than outside.
3. Reflectivity. Identified as a concern of the residents.

It was clear to Commissioner Walker that the parking lot issue more significant than the height of the buildings.

It was confirmed by Planning Director, Brian Berndt, that in the ORD Zone structures up to 35 feet are permitted.

Commissioner Guymon did not feel anything could be done about the parking structure because the proposed parking structure is a permitted use. He noted that it falls outside the Commission's conditional use discretion.

Commissioner Scott stated that the property had been raised up over the years so if they were to take it back down to the original elevation, height would probably not be an issue. Commissioner Guymon mentioned that he would want guidance on that particular issue.

Chair Bolyard questioned whether the allowable height of 35 feet was measured from original grade or current grade. It was determined that it would be necessary to determine the historical grade of the property prior to moving forward to mitigate parking issues.

Commissioner Guymon asked staff to prepare proposed findings and conclusions. Chair Bolyard agreed with Commissioner Guymon about starting with the applicants findings of fact. He also wanted to talk about other mitigating issues that could help the neighborhood such as lighting in the parking lot, elimination of the west lane, and parking. Commissioner Scott offered ideas on how to determine original grade.

## **5.2 Discussion to initiate proceedings to Chapter 19.82 (Signs) concerning the renovation, upgrade, conversion, and relocation of off-premises signs.**

(19:00:50) Mr. Berndt stated that staff was in the process of initiating a text amendment to the sign ordinance. Mr. Topham explained that the proposed revision deals with the conversion of traditional paper-face billboards to electronic billboards, which were being seen increasingly along high traffic corridors. The concern was that they would move to less travelled areas. Mr. Topham explained that state law does not address the issue of billboard conversion directly. As a result, the Council planned to enact an ordinance to determine whether billboard conversion can occur in Cottonwood Heights, and if so, under what conditions and where.

In response to a question raised, Mr. Berndt stated that it could be a guarantee of legal action if the proposed amendment is pursued. He noted that the outdoor advertising industry is aggressive and stated that legal action could also occur if no action is taken. He asked for direction from the Commission.

The consensus of the Commission was to proceed with the amendment. Commissioner Shah suggested the City be proactive and voiced her support for an ordinance amendment.

A Commission Member recalled that billboards were an issue around the time of the City's incorporation. He suggested the issue be addressed before it becomes a problem.

Commissioner Jones agreed that the issue was just starting to take hold and will not go away. In order to protect the City's view sheds and privacy he thought it was necessary for the City to take action.

It was suggested that a citizen discussion take place on the matter.

## **6.0     ADJOURNMENT**

*Commissioner Shah moved to adjourn. Commissioner Guymon seconded the motion. Vote on motion: James S. Jones-Aye, Joseph L. Scott-Aye, Jennifer Shah-Aye, Paxton Guymon-Aye, Gordon Walker-Aye, Chair Perry Bolyard-Aye. The motion passed unanimously.*

The Planning Commission Meeting adjourned at 7:10 p.m.

*I hereby certify that the foregoing represents a true, accurate and complete record of the Cottonwood Heights City Planning Commission Meeting held Wednesday, May 16, 2012.*

A handwritten signature in cursive script, reading "Teri Forbes". The signature is written in dark ink and is positioned above a horizontal line.

Teri Forbes  
T Forbes Group  
Minutes Secretary

Minutes approved: